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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDY FRANCO,

Defendant and Appellant.

2d Crim. No. B267144
(Super. Ct. No. 2014002620)
(Ventura County)

Andy Franco appeals an order revoking his Post Release Community Supervision (PRCS). (Pen. Code, § 3450 et seq.)¹ Appellant contends that his due process rights were violated because he was not provided a *Morrissey*-compliant² probable cause hearing. We affirm.

FACTS AND PROCEDURAL HISTORY

In May 2014, appellant pled guilty to one count of unlawful driving or taking of a vehicle (Veh. Code, § 10851, subd. (a)) and one count of evading an officer (Veh. Code, § 2800.2, subd. (a)). He also admitted prior conviction allegations. (§ 1203, subd. (e)(4).) He was sentenced to one year four months in state prison. He was released on PRCS a few months later.

¹ All statutory references are to the Penal Code unless otherwise stated.

² *Morrissey v. Brewer* (1972) 408 U.S. 471 (*Morrissey*).

On August 12, 2015, appellant was arrested for using a controlled substance. (Health & Saf. Code, § 11550, subd. (a).) The following day, Senior Deputy Probation Officer Venessa Meza advised appellant of the alleged PRCS violations (failure to obey all laws, criminal conduct, drug use and access to a knife), conducted a probable cause hearing, and determined there was probable cause that appellant had violated his PRCS terms. (§ 3455, subd. (a).) Appellant was advised of his right to counsel and right to a formal revocation hearing, and that Ventura County Probation Agency was recommending 90 days in county jail. Appellant rejected the recommendation, denied violating PRCS and requested appointment of counsel.

On August 17, 2015, Ventura County Probation Agency filed a PRCS revocation petition. (§ 3455, subd. (a).) Appellant moved to dismiss the petition on due process grounds based on *Williams v. Superior Court* (2014) 230 Cal.App.4th 636 (*Williams*). The trial court denied the motion on August 27, 2015, found that appellant violated PRCS and ordered him to serve 60 days in county jail (with a total credit of 32 days).

DISCUSSION

Appellant argues that his procedural due process rights were violated because he did not receive a *Morrissey*-compliant probable cause hearing. The PRCS revocation procedures challenged here are consistent with constitutional, statutory and decisional law. These procedures do not violate concepts of equal protection or due process. We so held in *People v. Gutierrez* (2016) 245 Cal.App.4th 393, 401-405, and *People v. Byron* (2016) 246 Cal.App.4th 1009. We follow our own precedent. The trial court did not err in denying the motion to dismiss.

Appellant contends his due process rights were violated because the probable cause hearing was not conducted by a neutral hearing officer and resembled an ex parte hearing to solicit a waiver of PRCS rights. The argument is without merit. The hearing officer (Meza) was not appellant's supervising probation officer and did not make the arrest or prepare the PRCS revocation report. (See *Morrissey, supra*, 408 U.S. at p. 485 [probable cause determination should be made by someone "not directly involved

in the case"]; *Williams, supra*, 230 Cal.App.4th at p. 647 [same].) Appellant makes no showing that he was denied a fair hearing.

Moreover, the denial of a *Morrissey*-compliant probable cause hearing does not warrant reversal unless it results in prejudice at the revocation hearing. (*In re La Croix* (1974) 12 Cal.3d 146, 154-155; *People v. Woodall* (2013) 216 Cal.App.4th 1221, 1238.) Appellant fails to show that any due process defect prejudiced him or affected the outcome of the PRCS revocation hearing. (*In re Winn* (1975) 13 Cal.3d 694, 698 [defendant has burden of showing prejudice]; *In re Moore* (1975) 45 Cal.App.3d 285, 294.) Appellant submitted on the revocation petition and served the custodial sanction (60 days in county jail). (See, e.g., *People v. Gutierrez, supra*, 245 Cal.App.4th at p. 399 [defendant submitted on PRCS revocation petition without contesting the probable cause determination].) "[T]here is nothing for us to remedy, even if we were disposed to do so." (*Spencer v. Kemna* (1998) 523 U.S. 1, 18.)

DISPOSITION

The judgment (order revoking PRCS) is affirmed.

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PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Donald D. Coleman, Judge
Superior Court County of Ventura

Jolene Larimore, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, and Connie H. Kan, Deputy Attorney General, for Plaintiff and Respondent.